

DIRECTIVE

WORKFORCE SERVICES

Number: WSD07-6

Date: January 16, 2008
69:164:cs:11421

TO: WORKFORCE DEVELOPMENT COMMUNITY

SUBJECT: NONDISCRIMINATION AND EQUAL OPPORTUNITY PROCEDURES

EXECUTIVE SUMMARY:

Purpose:

This directive updates the State's policy on the nondiscrimination and equal opportunity procedures for the Workforce Investment Act (WIA) Title I and Wagner-Peyser (WP) funded programs or activities. It also issues a standard discrimination complaint form that is now available for use by the workforce development community when processing a discrimination complaint. In addition, a new procedure guide is available for use when processing reasonable accommodation requests.

Scope:

This directive applies to entities that provide services through WIA Title I or WP funded programs and activities.

Effective Date:

This directive is effective on date of issue.

REFERENCES:

- Section 188 of the Workforce Investment Act of 1998
- Americans with Disabilities Act of 1990, Title II, Subpart A
- Age Discrimination Act of 1975, as amended
- Section 504 of the Rehabilitation Act of 1973
- Title IX of the Education Amendments of 1972
- Titles VI and VII of the Civil Rights Act of 1964, as amended
- Title 20 Code of Federal Regulations (CFR) Section 667.275
- Title 20 CFR Section 658.400
- Title 29 CFR Parts 31, 32, and 37
- Title 41 CFR Subpart 101-19.6
- Fair Employment and Housing Act (Government Code, Title 2, Division 3, Part 2.8), Chapters 1-6

EDD is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Special requests for services, aids, and/or special formats need to be made by calling (916) 654-8055 (Voice). TTY users, please call the California Relay Service at 711.

- Dymally-Alatorre Bilingual Services Act, Government Code Section 7290-7299.8
- WIA Directive WIAD04-20, Subject: Limited English Proficiency (May 12, 2005)

STATE-IMPOSED REQUIREMENTS:

This directive contains some State-imposed requirements. These requirements are indicated by ***bold, italic*** type.

FILING INSTRUCTIONS:

This directive supersedes WIA Directive WIAD01-21, dated June 25, 2002, and finalizes WSDD-5, issued for comment on November 28, 2007. The Workforce Services Division received no comments during the draft comment period. Retain this directive until further notice.

BACKGROUND:

This directive reiterates the guidance contained in WIAD01-21 which states that the WIA Section 188 nondiscrimination and equal opportunity provisions prohibit discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in a WIA Title I financially assisted program or activity. Title 29 CFR Part 37 implements the nondiscrimination and equal opportunity provisions specified in Section 188 of WIA.

POLICY AND PROCEDURES:

Definitions:

Recipient, taken from Title 29 CFR Part 37, means any entity to which financial assistance under WIA Title I is extended, either directly from the Department of Labor (DOL) or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient), but excluding the ultimate beneficiaries of the WIA Title I funded program or activity. In addition, One-Stop partners, as defined in Section 121(b) of the WIA, are treated as "recipients" and are subject to the nondiscrimination and equal opportunity requirements of Title 29 CFR Part 37, to the extent that they participate in the One-Stop delivery system.

Small recipient means a recipient who (1) serves a total of fewer than 15 beneficiaries during the entire grant year and (2) employs fewer than 15 employees on any given day during the grant year.

Complaint, for this directive only, means an allegation of a violation of the nondiscrimination and equal opportunity provisions.

General Provisions:

Title 29 CFR Section 37.54(a) requires that each Governor must establish and adhere to a Methods of Administration (MOA) for state programs. The MOA is a state-level

document that reflects the Governor's commitment to nondiscrimination and equal opportunity.

The MOA contains nine distinct elements. This directive outlines these elements and highlights compliance requirements that are significant to programs and activities that are part of the One-Stop delivery system and that are operated by One-Stop partners.

1. Designation of Local-Level Equal Opportunity (EO) Officer

Each Local Workforce Investment Area (LWIA) must designate an EO Officer who is responsible for coordinating its obligation under these regulations. ***The State requires that the LWIAs notify the Equal Employment Opportunity (EEO) Office whenever the designation of the local EO Officer changes.***

The EO Officer's responsibilities include:

- Serving as liaison with the Civil Rights Center (CRC).
- Investigating and monitoring the organization's and its subrecipients' activities and programs.
- Reviewing the organizations and its subrecipients' written policies.
- Developing, publishing, and enforcing the organization's discrimination complaint procedures.
- Reporting to the appropriate authority regarding discrimination matters.
- Participating in continuing education, and ensuring that staff receive continuing education, to maintain competency.
- Informing applicants, employees and program beneficiaries of their equal opportunity rights and responsibilities, and how the discrimination complaint system works.

The LWIAs must submit a copy of the local-level EO Officer's position description and organizational chart showing the relationship of each local-level EO Officer to their LWIA Administrator. The LWIAs will assign sufficient staff and resources to the EO Officer to ensure compliance with the nondiscrimination and equal opportunity provisions of WIA and Title 29 CFR Section 37.23.

Please mail required documents to the following address:

***Equal Employment Opportunity Office
Employment Development Department
800 Capitol Mall, MIC 49
P.O. Box 826880
Sacramento, CA 94280-0001***

The EO Officer's name, position title, business address (including e-mail address if applicable) and telephone number (voice and Telecommunications Device for the

Deaf [TDD], which is also known as teletypewriter [TTY]) must be publicized at the local level through a variety of means including posters, handouts, and listings in local directories.

Periodic training is recommended for the EO Officer and staff to keep abreast of equal opportunity issues. Training on nondiscrimination and equal opportunity is available through the State EO Officer and the Capacity Building Unit of the WSD.

Small recipients and service providers, as defined in Title 29 CFR Section, Part 37.4, need not designate an EO Officer with the full responsibilities as described above, but must designate an individual who will be responsible for the developing and publishing of complaint procedures and the processing of complaints as required by Section 37.76 through 37.79.

Additionally, the WIA Title I Governor's 15 and 25 percent subgrantees (except LWIAs) are not required to designate an EO Officer, but must designate an individual who will be responsible for adopting and publishing the EDD complaint procedures. Therefore, in lieu of a local complaint procedure, the WIA Title I Governor's 15 and 25 percent subgrantees must adopt the EDD's nondiscrimination and equal opportunity complaint procedures. The complaint procedures must include the option to file a charge of discrimination directly with the CRC. For more information, contact the State EO Officer listed below:

**Equal Employment Opportunity Office
Employment Development Department
800 Capitol Mall, MIC 49
P. O. Box 826880
Sacramento, CA 94280-0001**

2. Notice and Communication Requirements

Initial and continuing notice of nondiscriminatory practices (Attachment 1 and 2) and the right to file a complaint must be:

- Posted in prominent locations;
- Disseminated in internal memoranda and other written or electronic communications;
- Included in handbooks and manuals, brochures, broadcasts, and other communications;
- Made available to each participant; and
- Included in each participant's file. A copy of acknowledgement of receipt must be signed by the participant. Where the participant's file is maintained electronically, a record of such notice shall be documented in the participant's file.

The notice shall be provided in appropriate formats to individuals with visual impairments. A record of such notice shall be documented in the participant's file.

For information and services accessed electronically, each recipient shall establish a procedure, which assures that the notice requirements of Title 29 CFR Part 37 are met.

Distributed publications, broadcasts, electronic media and other communications, which promote WIA programs or activities, must include the following taglines: "This WIA Title I financially assisted program or activity is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities."

This applies similarly to those recipients required by law or regulation to publish or broadcast program information in public media. Where appropriate, information and services should be additionally provided in languages other than English.

On August 11, 2000, President Clinton issued Executive Order 13166, entitled "*Improving Access to Services for Persons with Limited English Proficiency*." This Executive Order mandates that individuals with limited English proficiency (LEP) have equal access to federally funded programs and activities. As required by Executive Order 13166, the DOL/CRC published revised policy guidance in the [Federal Register](#) (May 29, 2003) regarding the prohibition against national origin discrimination as it affects LEP individuals. This revised policy offers guidance from the DOL with respect to the responsibilities of recipients of federal financial assistance in serving LEP individuals, pursuant to the requirements of Title VI of the Civil Rights Act and Section 188 of WIA. Recipients of federal financial assistance must take reasonable steps to ensure that individuals having LEP receive the language assistance necessary to afford them meaningful access to programs, services, and information provided by the recipients.

The Dymally-Alatorre Bilingual Services Act (DABSA) requires that, when state and local agencies serve a "substantial number of non-English-speaking people," they must employ a "sufficient number of qualified bilingual staff in public contact positions" and translate documents explaining available services in their clients' language. The DABSA establishes specific legal mandates for state agencies, but allows local agencies discretion in establishing the level and extent of bilingual services they provide.

Where materials indicate that the recipients may be reached by telephone, the telephone number of any TDD/TTY or relay service used by the recipient must be indicated. If the recipient does not have a TDD/TTY, the California Relay Service (CRS) (1-800/735-2922) is an alternative. The CRS relays messages to deaf persons via the telephone. A caller can contact the relay service by voice or TDD, and an operator will contact the party to be called using voice or TDD/TTY. A TDD/TTY or relay service should be available where services provided by telephone are a major function of the program or activity.

3. Review Assurances in Job Training Plans, Contracts, and Policies and Procedures

A system must be implemented to ensure that all contracts, job training plans, and policies and procedures contain the nondiscrimination assurance as specified. The nondiscrimination assurance must state that the grant applicant will "comply fully with the nondiscrimination and equal opportunity provisions" of WIA and acknowledge the government's right to seek judicial enforcement of the nondiscrimination assurance.

Title 29 CFR Section 37.20 requires that each application for federal financial assistance under Title I of WIA must include the nondiscrimination assurance. Application for assistance is defined as the process by which required documentation is provided to the Governor, recipient, or DOL prior to and as a condition of receiving federal financial assistance under Title I of WIA (including both new and continuing assistance).

4. Universal Access

As required in Title 29 CFR Section 37.42, recipients must ensure universal access to WIA Title I financially assisted programs and activities by:

- Implementing an outreach and recruitment plan to solicit participation of all potentially WIA Title I-eligible applicants in the entire locale;
- Creating an outreach and recruitment plan that will reach specific target populations through media, schools, and community services groups;
- Considering a pool of individuals for participation that includes members of both sexes, various race/ethnicity/age groups, and individuals with disabilities;
- Establishing a hiring and eligibility process that is accessible to qualified applicants with disabilities; and
- Utilizing facilities designed to provide reasonable access to individuals with disabilities in the following areas: training, job structure, work schedule, work procedure, and work equipment and auxiliary aids accommodations.

5. Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended and Title 29 CFR Part 37

The recipients must ensure the accessibility to their training programs and activities for all individuals, and must administer their training programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities. This includes employment tests or other selection criteria used by recipients that do not screen out individuals with disabilities, and training programs accessible to individuals with visual, hearing, or speech impairments. The recipients must provide means for individuals with disabilities to receive information about availability of facilities accessible to them. Additionally, recipients must provide auxiliary aids and services and reasonable accommodation to qualified individuals

with disabilities to enable them to perform duties of the job (e.g., special aids, modified work sites, or restructuring of jobs).

The recipients must also provide:

- Designated parking for the disabled that is accessible to the building entrance, free of any barriers (e.g., steps, steep slopes, low spots in ground or pavement, buckled concrete, gravel);
- Signage at a primary entrance to each of their inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities;
- The international symbol for accessibility at each primary entrance of an accessible facility;
- Building entrance doors that can be opened with one hand;
- Accessible information/public counter areas;
- Facility elevators that are accessible from the entrance meeting the above criteria;
- Elevator control panel and entrance buttons with raised numbers and Braille symbols at an accessible height;
- At least one accessible public telephone;
- Accessible meeting rooms with Braille symbols at an accessible height;
- Restroom facilities that have at least one toilet stall with an accessible doorway. The stall should have grab bars and the toilet stool should be accessible for the disabled individual after the door is closed (access to the grab bars should not be obstructed by such things as toilet paper dispensers, etc.); and
- Alternative methods to ensure that training, job structure, work schedule, work procedure, and work equipment are available to individuals with disabilities when the facilities are not physically accessible to individuals with disabilities.

Title 29 CFR Section 37.8—With regard to aid, benefits, services, training, and employment, a recipient must:

- Provide reasonable accommodation to qualified individuals with disabilities, who are applicants, registrants, eligible applicants/registrants, participants, employees, or applicants for employment, unless providing the accommodation would cause the recipient undue hardship on business operations; and
- Make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless making the modifications would fundamentally alter the nature of the WIA Title I financially assisted service, program, or activity.

In those circumstances where a recipient believes that the proposed accommodation would cause undue hardship or the proposed modification would fundamentally alter the program, the recipient has the burden of proving that compliance with this

section would result in such hardship and alteration. The recipient must make the decision that the accommodation would cause such hardship or result in such alteration after considering all factors listed in the definitions of "undue hardship" and "fundamental alteration." The decision must be accompanied by a written statement of the recipient's reasons for reaching that conclusion. The recipient must provide a copy of the statement of reasons to the individual(s) who requested the modification.

If a requested accommodation would result in undue hardship or a modification would result in a fundamental alteration, the recipient must take any other action that would not result in such burden or such alteration but would nevertheless ensure that individuals with disabilities receive the aid, benefits, services, training or employment provided by the recipient.

Title 29 CFR Section 37.4 defines "undue" hardship" with regard to reasonable accommodation of individuals with disabilities as significant difficulty or expense incurred by a recipient, when considered in light of certain factors to be considered. These factors include, but are not limited to, the nature and net cost of the accommodations needed, overall financial resources of recipient, type of operation(s) of recipient, the number of persons aided, benefited, served, trained, or employed, the impact on the ability of other participants to receive aids, benefits, services, or training, or of other employees to perform their duties and the impact on the facility's ability to carry out its business.

The term "fundamental alteration" means (1) a change in the essential nature of a program or activity as defined in Title 29 CFR Part 37, including but not limited to an aid, service, benefit, or training or (2) a cost that a recipient can demonstrate would result in an undue burden. The definition of "fundamental alteration" incorporates the concept of "undue financial and administrative burdens" in Title 29 CFR Part 37.

In addition, recipients must take appropriate steps to ensure that communications with beneficiaries, registrants, applicants, participants, and members of the public who are individuals with disabilities are as effective as communications with others.

A Reasonable Accommodation Policy and Procedure Guide is now available for use when processing reasonable accommodation requests (see Attachment 4). This document contains two sections. The first section (pages 1 through 8), provides general guidance and definitions for use when processing reasonable accommodation requests. The second section (pages 9 through 14), provides step-by-step instructions on how to process these requests.

6. Data and Information Collection and Maintenance

In compliance with Section 188 of WIA, any entity to which financial assistance under WIA Title I is extended, either directly from the DOL or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient), but excluding the ultimate beneficiaries of the WIA Title I funded program or activity must:

- Collect data on race/ethnicity, sex, age, and, where known, disability status, of each applicant, registrant, eligible applicant/registrant, participant, terminee, applicant for employment, and employee;
- Maintain records of data in a system designed to allow the State and CRC to conduct statistical or other quantifiable analyses to verify compliance;
- Safeguard the confidentiality of the required information (confidential information should only be used for recordkeeping and reporting purposes; determining eligibility, where appropriate, for WIA Title I financially assisted program or activity; determining if the recipient is operating its WIA program in a nondiscriminatory manner, or other use authorized by law);
- Maintain a log of complaints filed alleging discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in a WIA Title I financially assisted program and activity. The log must include: (1) name and address of the complainant; (2) grounds of the complaint; (3) description of the complaint; (4) date complaint was filed; (5) disposition and date of disposition of complaint; and (6) any other pertinent information.

The EEO Office requires a copy of the complaint log annually (calendar year). Please mail it to the following address:

***Equal Employment Opportunity Office
Employment Development Department
800 Capitol Mall, MIC 49
P. O. Box 826880
Sacramento, CA 94280-0001***

- Promptly notify the CRC of any administrative enforcement actions or lawsuits filed against a LWIA alleging discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in a WIA Title I financially assisted program and activity. Provide a brief description of the findings in any civil rights compliance review where the applicant or recipient was found in noncompliance and keeps a log containing certain information regarding complaints filed with it according to procedures set by the CRC;
- Retain records, including records of complaints, for a period of not less than three years from the close of the applicable program year or date of resolution of complaint; and
- Adopt procedures for responding to complaints of discrimination.

7. Monitor Recipients for Compliance

In accordance with Title 29 CFR Sections 37.54(d) (2) (ii) and 37.54(d) (2) (iii), the EEO Office of the EDD monitors LWIAs for compliance with WIA provisions and related regulations.

The EEO Office requires that each LWIA complete and submit the biennial self-evaluation issued by the EEO Office. The EEO Office will review the self-evaluations, along with other equal opportunity-related data, to coordinate and determine if the LWIA will be monitored on-site during a given program year. Through self-evaluations, LWIAs can identify the compliance status of their programs, activities, and areas in which they need technical assistance.

8. Complaint Processing Procedures

In compliance with nondiscrimination and equal opportunity provisions of the WIA and Title 29 CFR Section 37.76, the EO Officer must:

- Develop and publish procedures (including alternative dispute resolution) for resolving allegations within the LWIA for noncompliance with applicable nondiscrimination and equal opportunity provisions;
- Develop and publish procedures for resolving allegations against service providers for noncompliance with applicable nondiscrimination and equal opportunity provisions. The service providers must then follow those procedures (NOTE: Although the LWIA does not have the same contractual jurisdiction with vendors as with service providers, ***the LWIA shall document the facts of an alleged complaint. The facts should be used to advise the participant of any recourse available and to determine if the LWIA should continue to utilize the services of the vendor.***); and
- Establish a system to record discrimination complaints.

The LWIA's complaint processing procedures must specify the following:

- a. Any person who believes that he or she or any specific class of individuals has been or is being subjected to discrimination prohibited by the nondiscrimination and equal opportunity provisions of WIA may file a written complaint by using the Discrimination Complaint Form – Workforce Development Community, or a representative may file the complaint on his or her behalf.
- b. The complaint may be filed either with the recipient's EO Officer (or the person designated for this purpose), or directly with the CRC, U.S. Department of Labor, 200 Constitution Avenue N.W., Room N-4123, Washington, D.C. 20210.
- c. A complaint filed pursuant to Title 29 CFR 37 must be filed within 180 days of the alleged discrimination. The CRC, if shown good cause, may extend the filing time. In order to receive an extension, the complainant must be notified that a waiver letter is to be filed with the CRC. The waiver letter should include the reason the 180-day time period elapsed. This time period for filing is for the administrative convenience of the CRC and does not create a defense for the respondent.

- d. Complaints must be filed in writing by completing the *Discrimination Complaint Form – Workforce Development Community* or your own local form. Regardless of the form used, all complaints must capture the following information and shall:
- Be signed by the complainant or his or her representative;
 - Contain the complainant's name, address, or other means of contacting him or her;
 - Identify the respondent; and
 - Describe the complainant's allegation in sufficient detail to allow the CRC or LWIA, as applicable, to determine whether (1) the CRC or the LWIA has jurisdiction over the complaint; (2) the complaint was filed timely; and (3) the complaint has apparent merit, i.e., whether the allegations, if true, would violate any of the nondiscrimination and equal opportunity provisions of WIA.
- e. Each complainant and respondent has the right to be represented by an attorney or other individual of his or her own choice.
- f. Alternative Dispute Resolution (ADR):
- (1) The complainant must be offered ADR immediately upon receipt of the complaint. The choice whether to use ADR rests with the complainant; the preferred form of ADR is mediation.

What is Mediation?

Mediation is a voluntary process during which a neutral third party assists both parties (complainant and respondent), communicates their concerns and comes to an agreement about how to resolve a dispute.

The mediator does not make decisions, rule as to who is right or wrong, nor take sides or advocate for one side or the other. The role of the mediator is to help with communication so the parties can reach an understanding about how to best resolve their differences.

As the law allows, mediation proceedings and the information shared are confidential and no information divulged during this mediation may be used in court or any legal or administrative proceedings.

If the parties do not reach an agreement under ADR, the complainant may file directly with the CRC as described in Title 29 CFR Sections 37.71 through 37.74.

- (2) A party to any agreement reached under ADR may file a complaint with the CRC in the event the agreement is breached. In such circumstances, the following rules will apply:

- The non-breaching party may file a complaint with the CRC within 30 days of the date on which the non-breaching party learns of the alleged breach.
- The CRC must evaluate the circumstances to determine whether the agreement has been breached. If the CRC determines that the agreement has been breached, the complainant may file a complaint with the CRC based upon his or her original allegation(s), and the CRC will waive the time deadline for filing such a complaint.

Complaints filed with the LWIA:

- a. The EO Officer shall issue a written acknowledgement of receipt by the LWIA of a complaint alleging discrimination by a WIA Title I recipient and shall include a notice of the complainant's right to representation in the complaint process.

The EEO Office requires one copy of the complaint. Please mail it to the following address:

***Equal Employment Opportunity Office
Employment Development Department
800 Capitol Mall, MIC 49
P. O. Box 826880
Sacramento, CA 94280-0001***

- b. If the complainant elects not to participate in the ADR process, the EO Officer shall investigate the circumstances underlying the complaint.
- c. At any point in the investigation of the complaint, the complainant, respondent, or the EO Officer may request that the parties attempt conciliation. The EO Officer shall facilitate such conciliation efforts.

What is Conciliation?

Conciliation is a process whereby the parties to a dispute agree to utilize the services of a conciliator, who then meets with the parties separately in an attempt to resolve their differences. Conciliation differs from mediation in that the main goal is to conciliate, most of the time by seeking concessions.

If the conciliator is successful in negotiating an understanding between the parties, said understanding is almost always committed to writing (usually with the assistance of legal counsel) and signed by the parties, at which time it becomes a legally binding contract and falls under contract law.

- d. The LWIA shall be allowed 90 days to issue a Notice of Final Action. If, during the 90-day period, the LWIA issues a decision that is not

acceptable to the complainant, the complainant or his or her representative may file a complaint with the CRC within 30 days after the date on which the complainant receives the Notice.

- e. If the 90 days expire and the complainant does not receive a Notice of Final Action from the LWIA, or the LWIA failed to issue a Notice of Final Action, the complainant or his/her representative may, within 30 days of the expiration of the 90-day period, file a complaint with the CRC. In other words, the complaint must be filed with the CRC within 120 days of the date on which the complaint was filed with the LWIA.
- f. The CRC may extend the 30-day time limit if the complainant is not notified, as provided in Title 29 CFR Section 37.81, or for other good cause shown.
- g. The LWIA shall notify the complainant in writing immediately upon determining that it does not have jurisdiction over a complaint that alleges a violation of the nondiscrimination and equal opportunity provisions of WIA. The Notice of Lack of Jurisdiction must also include the basis for such determination, as well as a statement of the complainant's right to file a written complaint with the CRC within 30 days of receipt of the Notice.
- h. During the resolution process, the EO Officer shall assure that all parties involved are given due process. These due process elements include:
 - Notice to all parties of the specific charges;
 - Notice to all parties of the responses to the allegations;
 - The right of both parties to representation;
 - The right of each party to present evidence, and to question others who present evidence; and
 - A decision made strictly on the evidence on the record.

Actions by the CRC:

- a. The CRC determines acceptance of a complaint filed pursuant to Title 29 CFR Section 34.82. When the CRC accepts a complaint for investigation, it shall:
 - Notify the LWIA and the complainant of the acceptance of the complaint for investigation; and
 - Advise the LWIA and complainant on the issues over which the CRC has accepted jurisdiction.
- b. The LWIA, the complainant, or a representative may contact the CRC for information regarding the complaint filed.
- c. When a complaint contains insufficient information, the CRC will seek the needed information from the complainant. If the complainant is unavailable

after reasonable efforts have been made to reach him or her, or the information is not provided within the time specified, the complaint file may be closed without prejudice upon written notice sent to the complainant's last known address.

- d. The CRC, per WIA Section 183(c), may issue a subpoena to the complainant to appear and give testimony and/or produce documentary evidence, before a designated representative, relating to the complaint being investigated. Issuing a subpoena can be done any place in the United States, at any designated time and place.
- e. Where the CRC lacks jurisdiction over a complaint, the CRC shall:
 - Notify the complainant, explaining why the complaint is not covered by the nondiscrimination and equal opportunity provisions of WIA or Title 29 CFR Part 37; and
 - Refer the complainant to the appropriate federal, state, or local authority, when possible.
- f. The CRC will notify the complainant when a claim is not to be investigated and explain the basis for that determination.
- g. The CRC will refer complaints governed by the Age Discrimination Act of 1975 to mediation as specified in Title 45 CFR Section 90.43(c)(3).
- h. If the complainant alleges more than one kind of complaint, "joint complaint," e.g., individual employment discrimination, age discrimination, equal pay discrimination, etc., the CRC shall refer such joint complaint to the Equal Employment Opportunity Commission for investigation and conciliation under the procedures described in Title 29 CFR, Parts 1690 or 1691, as appropriate. The CRC will advise the complainant and the LWIA of the referral.
- i. Under the One-Stop delivery system where the complainant alleges discrimination by an entity that operates a program or activity financially assisted by a federal grant making agency other than DOL, but participates as a partner in a One-Stop delivery system, the following procedures apply:
 - If the complainant alleges discrimination on a basis that is prohibited both by Section 188 of WIA and by a civil rights law enforced by the federal grant making agency, the CRC and the grant making agency have dual jurisdiction over the complaint. The CRC will refer the complaint to the grant making agency for processing. The grant making agency's regulations will govern the processing of the complaint.
 - If the complainant alleges discrimination on the basis that is prohibited by Section 188 of WIA, but not by any civil rights laws enforced by the federal grant making agency, the CRC has sole jurisdiction over the complaint and will retain and process the complaint pursuant to

Title 29 CFR Part 37. The CRC will advise the complainant and the LWIA of the referral.

- j. The CRC may offer the parties of a complaint the option of mediating the complaint. In such circumstances, the following rules apply:
 - The mediation is voluntary; the parties must consent before the mediation process will proceed.
 - The mediation will be conducted under the guidance issued by the CRC.
 - If the parties are unable to reach resolution of the complaint through the mediation, the CRC will investigate and process the complaint under Title 29 CFR Sections 37.82 through 37.88.
- k. After making such a cause finding, the CRC shall issue an Initial Determination. The Initial Determination shall notify the complainant and the LWIA, in writing, of:
 - The specific findings of the investigation;
 - The proposed corrective or remedial action and the time by which the corrective or remedial action must be completed;
 - Whether it will be necessary for the LWIA to enter into a written agreement; and
 - The opportunity to participate in voluntary compliance negotiations.
- l. Where a no cause determination is made, the CRC must issue a Final Determination to the complainant and the LWIA. The Final Determination represents the DOL's final agency action on the complaint.

9. Corrective Actions/Sanctions

A Letter of Findings, Notice to Show Cause, or Initial Determination issued pursuant to Title 29 CFR Sections 37.62 or 37.63, 37.66 and 37.67, or 37.91, respectively, must include the steps and the specific time period it will take the LWIA to achieve voluntary compliance. (See Section 37.94 for corrective action steps.)

Monetary corrective action may **not** be paid from federal funds.

If the LWIA receives a finding of noncompliance, the following sections of Title 29 CFR Part 37 may be referred to for detailed information:

- Final Determinations, Sections 37.90-37.101
- Breaches of Conciliation Agreements, Sections 37.102-37.105
- Subpart E-Federal Procedures for Effecting Compliance, Sections 37.110-37.115

Intimidation and Retaliation Prohibited:

No recipient may discharge, intimidate, retaliate, threaten, coerce, or discriminate against any individual because the individual has filed a complaint; opposed a practice prohibited by the nondiscrimination and equal opportunity provisions of the WIA; furnished information to, or assisted or participated in any manner in an investigation, review, hearing, or any other activity related to administration of, exercise of authority under, or exercise of privilege secured by the nondiscrimination and equal opportunity of WIA or Title 29 CFR Part 37. The sanctions and penalties contained in these procedures may be imposed against any recipient who engages in any such retaliation or intimidation, or fails to take necessary steps to prevent such activity.

Discrimination Complaint Form – Workforce Development Community

It is important for the EDD to receive documentation with sufficient information for the EDD EEO Office to analyze, compile, and report in a manner that is consistent with the DOL requirements. It is helpful when information gathering efforts include adequate questions that will elicit responses from the complainant, making the need to request additional information less likely.

Since there has been no standard form available to address discrimination complaints, the “*Discrimination Complaint Form – Workforce Development Community*” (Attachment 3), was developed to assist clients and service providers. This new form is available for use by the workforce development community in an effort to provide more consistent information when processing discrimination complaints from clients of WIA and WP funded programs and activities. The workforce development community is encouraged, but not required, to use this standard form.

ACTION:

Bring this directive to the attention of affected staff.

INQUIRIES:

If you have any questions, please contact your [Regional Advisor](#) at (916) 654-7799.

/S/ BILL BURKE
Assistant Deputy Director
Workforce Services Branch

/S/ BOB HERMSMEIER
Chief
Workforce Services Division

Attachments

EQUAL OPPORTUNITY IS THE LAW

It is against the law for this recipient of federal financial assistance to discriminate on the following bases:

Against any individual in the United States, on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief; and

Against any beneficiary of programs financially assisted under Title I of the Workforce Investment Act of 1998 (WIA), on the basis of the beneficiary's citizenship/status as a lawfully admitted immigrant authorized to work in the United States, or his or her participation in any WIA Title I financially assisted program or activity.

The recipient must not discriminate in any of the following areas:

Deciding who will be admitted, or have access, to any WIA Title I financially assisted program or activity;

Providing opportunities in, or treating any person with regard to, such a program or activity; or

Making employment decisions in the administration of, or in connection with, such a program or activity.

WHAT TO DO IF YOU BELIEVE YOU HAVE EXPERIENCED DISCRIMINATION

If you think that you have been subjected to discrimination under a WIA Title I financially assisted program or activity, you may file a complaint within 180 days from the date of the alleged violation with either:

The recipient's Equal Opportunity Officer (or the person whom the recipient has designated for this purpose); or The Director, Civil Rights Center (CRC), U.S. Department of Labor, 200 Constitution Avenue NW, Room N-4123, Washington, DC 20210.

If you file your complaint with the recipient, you must wait either until the recipient issues a written Notice of Final Action, or until 90 days have passed (whichever is sooner), before filing with the Civil Rights Center (see address above).

If the recipient does not give you a written Notice of Final Action within 90 days of the day on which you filed your complaint, you do not have to wait for the recipient to issue that Notice before filing a complaint with the CRC. However, you must file your CRC complaint within 30 days of the 90-day deadline (in other words, within 120 days after the day on which you filed your complaint with the recipient).

If the recipient does give you a written Notice of Final Action on your complaint, but you are dissatisfied with the decision or resolution, you may file a complaint with the CRC. You must file your CRC complaint within 30 days of the date on which you received the Notice of Final Action.

1. Complainant information:

State: _____ Zip Code: _____

2. Complainant contact information:

Day	Monday	Tuesday	Wednesday	Thursday	Friday
Time					
Phone					

3. Contact information for the person(s) who you claim discriminated against you:

Date of first occurrence: _____ Date of most recent occurrence: _____

4. Tell us about the incident(s):

- Explain briefly what happened and how you were discriminated against.
- Provide the date(s) when the incident(s) occurred.
- Indicate who discriminated against you. Include names and titles if possible.
- If other people were treated differently than you, tell us how they were treated differently.
- Attach any documents that you think might help us better understand your complaint.

5. Please list below any person(s) (witnesses) that we may contact for additional information to support or clarify the complaint.

Name	Address	Phone

6. Basis for the discrimination:

- Check the type of discrimination you experienced, such as age, race, color, national origin, disability, etc.
- If you believe more than one basis was involved, you may check more than one box:

- | | |
|--|---|
| <input type="checkbox"/> Age- <i>provide date of birth:</i> | <input type="checkbox"/> Citizenship or status as alien US Worker |
| <input type="checkbox"/> Color | <input type="checkbox"/> Disability |
| <input type="checkbox"/> National Origin | <input type="checkbox"/> Political Affiliation |
| <input type="checkbox"/> Political Belief | <input type="checkbox"/> Religion |
| <input type="checkbox"/> Retaliation | <input type="checkbox"/> Sexual Harassment |
| <input type="checkbox"/> Gender - <i>Specify</i> <input type="checkbox"/> F <input type="checkbox"/> M | <input type="checkbox"/> Status as a program participant under the Workforce Investment Act of 1998 |
| <input type="checkbox"/> Race - <i>indicate race:</i> | <input type="checkbox"/> Other (<i>Specify</i>): |
| <input type="checkbox"/> of Hispanic or Latino origin | <input type="checkbox"/> not of Hispanic or Latino origin |

7. Have you previously filed a complaint against this person(s)/entity? ☐ Yes ☐ No
 If **YES**, answer the questions below, if **NO** move to section 8.

a. Was your complaint in writing? ☐ Yes ☐ No

b. On what date did you file the complaint?

c. Name of office where you filed your complaint:
 Address: _____
 City: _____ State _____ ZIP Code _____
 Phone number: () - _____
 Contact person (if known): _____

d. Have you been provided a final decision or report? ☐ Yes ☐ No
If you marked "YES", please attach a copy of the complaint.

d. Have you been provided a final decision or report? ☐ Yes ☐ No
If you marked "YES", please attach a copy of the complaint.

8. What corrective action or remedy do you seek? Please explain:	

9. Choosing a personal representative:		
<ul style="list-style-type: none"> You may choose to have someone else represent you in dealing with this complaint. It may be a relative, friend, union representative, an attorney or someone else. If you choose to appoint someone to represent you, all of our communication to you will be routed through your representative. 		
Do you want to authorize a personal representative to handle this complaint?		<input type="checkbox"/> Yes <input type="checkbox"/> No
If YES , complete the section below. If NO , go to Section 10.		
AUTHORIZATION OF PERSONAL REPRESENTATIVE		
I wish to authorize the individual identified below to act on my behalf as my personal representative, in matters such as mediation, settlement conferences, or investigations regarding this complaint.		
Name:		
<input type="checkbox"/> I am an attorney representing the complainant. <input type="checkbox"/> I am not an attorney representing the complainant.		
Mailing Address:		
City:	State:	Zip Code:
Phone : () -	Fax: () -	
E-mail: () -		

- | | |
|--|--|
| Do you want to authorize a personal representative to handle this complaint? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
|--|--|

AUTHORIZATION OF PERSONAL REPRESENTATIVE

I wish to authorize the individual identified below to act on my behalf as my personal representative, in matters such as mediation, settlement conferences, or investigations regarding this complaint.

Name: _____

☐ I am an attorney representing the complainant. ☐ I am not an attorney representing the complainant.

Mailing Address:

City: _____ State: _____ Zip Code: _____

Phone : () - Fax: () -

E-mail: () -

10. Alternate Dispute Resolution (ADR) also known as mediation.

Notice: You must indicate if you wish to mediate your case. The EEO Office cannot begin to process your complaint until you have made a selection. Please check **YES** or **NO** in the spaces below.

- Mediation is an alternative to having your complaint investigated.
- Neither party loses anything by mediating.
- The parties to the complaint review the facts, discuss opinions about the facts, and strive for an agreement that is satisfactory for both.
 - Agreement to mediate is not an admission of guilt by the person(s)/entity that you claim discriminated against you.
 - Mediation is conducted by a trained, qualified and impartial mediator.
 - You (or your Personal Representative) have control to negotiate a satisfactory agreement.
 - **Terms of the agreement are signed by the complainant and the person(s)/entity that you claim discriminated against you.**
 - **Agreements are legally binding on both parties.**
 - If an agreement is not reached, a formal investigation will start.
 - Failure to keep an agreement will result in a formal investigation.
 - A formal investigation will be opened if retaliation is reported.
- **Do you wish to mediate your complaint?**
(Please check only one box)

☐ **YES**, I want to mediate.

☐ **NO**, please investigate.

If you select "YES" you will be contacted within five business days with more information.

11. Complainant's signature:

You must sign this form for your complaint to be processed!

- Faxed or otherwise electronically delivered complaints will be logged into our system; however, an official investigation cannot begin until the original, signed copy is received.

Signature:

Date:

[Form in MS Word](#)

REASONABLE ACCOMMODATION POLICY AND PROCEDURE GUIDE

I. Introduction

The purpose of this guide is to assist local entities who are funded with Workforce Investment Act (WIA) or Wagner-Peyser (W-P) Act funding, in processing reasonable accommodation requests. Each entity will ensure that reasonable accommodations are provided to qualified individuals with disabilities to enable them to:

- Be considered for the aid, benefits, services, training or employment as desired; and/or
- Perform the essential functions of their jobs; or to receive aid, benefits, services, or training equal to that provided to qualified individuals without disabilities; and/or
- Enjoy benefits and privileges of the aid, benefits, services, training, or employment equal to those that are enjoyed by other similarly situated individuals without disabilities unless providing such accommodation would impose an undue hardship.

The requirement to provide reasonable accommodations applies to disabilities that are known to the local entity.

The reasonable accommodation process, including a description of key terms, is set forth below and should be implemented immediately.

II. Key Terms

A. Reasonable accommodation means:

- 1) Modifications or adjustments to an application/registration process that enables a qualified individual with a disability to be considered for the aid, benefits, services, training, or employment that the qualified individual desires; or
- 2) Modifications or adjustments that enable a qualified individual with a disability to perform the essential functions of a job or to receive aid, benefits, services, or training equal to that provided to qualified individuals without disabilities; or
- 3) Modifications or adjustments that enable a qualified individual with a disability to enjoy the same benefits and privileges of the aid, benefits, services, training, or employment as are enjoyed by other similarly situated individuals without disabilities.

EDD is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Special requests for services, aids, and/or special formats need to be made by calling (916) 654-8055 (Voice). TTY users, please call the California Relay Service at 711.

B. Qualified individual with a disability means:

- 1) With respect to employment, an individual with a disability who, with or without reasonable accommodation, is capable of performing the essential functions of the job in question; or
- 2) With respect to aid, benefits, services, or training, an individual with a disability who, with or without reasonable accommodation and/or reasonable modification, meets the essential eligibility requirements for the receipt of such aid, benefits, services, or training.

C. An applicant is an individual seeking federally-assisted aid, benefits, services, or training. An individual is considered an "applicant" at the point in which they submit personal information in response to a request by the local entity for such information.

D. A participant is an individual who is receiving aid, benefits, services or training under a WIA Title I or W-P funded program.

E. A disability means, with respect to an individual:

- 1) "Medical condition":
 - a) Any health impairment related to or associated with a diagnosis of cancer or a record or history of cancer.
 - b) Genetic characteristics. For purposes of this section, "genetic characteristics" means either of the following:
 - (i) Any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of a disease or disorder in a person or his or her offspring, or that is determined to be associated with a statistically increased risk of development of a disease or disorder, and that is presently not associated with any symptoms of any disease or disorder.
 - (ii) Inherited characteristics that may derive from the individual or family member, that are known to be a cause of a disease or disorder in a person or his or her offspring, or that are determined to be associated with a statistically increased risk of development of a disease or disorder, and that are presently not associated with any symptoms of any disease or disorder.
- 2) "Mental disability" includes, but is not limited to, all of the following:
 - a) Having any mental or psychological disorder or condition, such as

mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity. For purposes of this section:

- (i) “Limits” shall be determined without regard to mitigating measures, such as medications, assistive devices, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.
 - (ii) A mental or psychological disorder or condition limits a major life activity if it makes the achievement of the major life activity difficult.
 - (iii) “Major life activities” shall be broadly construed and shall include physical, mental, and social activities and working.
- b) Any other mental or psychological disorder or condition not described in paragraph (a) that requires special education or related services.
- c) Having a record or history of a mental or psychological disorder or condition described in paragraph (a) or (b), which is known to the employer or other entity covered by this part.
- d) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any mental condition that makes achievement of a major life activity difficult.
- e) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a mental or psychological disorder or condition that has no present disabling effect, but that may become a mental disability as described in paragraph (a) or (b).

“Mental disability” does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

3) “Physical disability”:

- a) Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following:
 - (i) Affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.

(ii) Limits a major life activity. For purposes of this section:

- “Limits” shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.
 - A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult.
 - “Major life activities” shall be broadly construed and includes physical, mental, and social activities and working.
- b) Any other health impairment not described in paragraph (a) that requires special education or related services.
- c) Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (a) or (b) which is known to the employer or other entity covered by this part.
- d) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any physical condition that makes achievement of a major life activity difficult.
- e) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (a) or (b).
- f) “Physical disability” does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

F. Essential eligibility requirements are such criteria that can be shown to be necessary for the provision of the aid, benefit, service, training, program, or activity being offered.

G. Essential functions means the fundamental job duties of the employment position the individual with a disability holds or desires. "Essential functions" does not include the marginal functions of the position.

- 1) A job function may be considered essential for any of several reasons, including, but not limited to, any one or more of the following:
 - a) The function may be essential because the reason the position exists is to perform that function.

- b) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed.
 - c) The function may be highly specialized, so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.
- 2) Evidence of whether a particular function is essential includes, but is not limited to the following:
 - a) The employer's judgment as to which functions are essential.
 - b) Written job descriptions prepared before advertising or interviewing applicants for the job.
 - c) The amount of time spent on the job performing the function.
 - d) The consequences of not requiring the incumbent to perform the function.
 - e) The terms of a collective bargaining agreement.
 - f) The work experiences of past incumbents in the job.
 - g) The current work experience of incumbents in similar jobs.

H. Fundamental alteration means a change in the essential nature of a program or activity, or a cost that the local entity can demonstrate would result in an undue burden. Factors to be considered in determining whether a requested modification would result in a fundamental alteration are referenced in Step 3 of this process (described later in the *Step by Step Process* section of this guide.)

I. Major life activities mean functions such as:

- caring for one's self;
- performing manual tasks;
- walking;
- seeing;
- hearing;
- speaking;
- breathing;
- learning; and/or
- working.

J. Undue hardship means an action requiring significant difficulty or expense, when considered in light of the following factors:

- 1) The nature and cost of the accommodation needed.

- 2) The overall financial resources of the facilities involved in the provision of the reasonable accommodations, the number of persons employed at the facility, and the effect on expenses and resources or the impact otherwise of these accommodations upon the operation of the facility.
- 3) The overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of employees, and the number, type, and location of its facilities.
- 4) The type of operations, including the composition, structure, and functions of the workforce of the entity.
- 5) The geographic separateness, administrative, or fiscal relationship of the facility or facilities.

III. Effective Communication and Other Assistance

Each local entity shall be responsible for ensuring effective communication between the qualified individual with a disability and entity staff throughout the reasonable accommodation process. Effective communication may require arranging for sign language interpreters, assistive listening equipment, alternative formats for people with visual impairments, or other approaches. In addition, the local entity shall also be responsible for providing such other reasonable assistance as is requested throughout the reasonable accommodation process, as well as through the process of any necessary appeals.

IV. Confidentiality

- A. **Local entity must maintain confidentiality.** All documentation and information concerning the medical condition or history of an individual with a disability requesting an accommodation must be collected on forms separate from other forms related to that individual, and must be maintained by the local entity in separate medical files. The information shall be treated as confidential medical records, and access to the records must be limited, except to the extent that:
 - 1) The local entity management must be informed about work restrictions or reasonable accommodations;
 - 2) The first-aid and safety personnel need to be informed if the disability may require emergency treatment; and
 - 3) Government officials investigating compliance with law are required to be provided with relevant information upon request.

What Accommodations Are Reasonable?

The reasonableness of an accommodation will depend upon the circumstances of each case. For additional clarification as to what are reasonable accommodations in the employment context, refer to 29 CFR Part 32. Reasonable accommodations include, but are not limited to:

- Making facilities that are not otherwise required to comply with Federal accessibility standards physically accessible to and usable by people with disabilities (e.g., providing ramps, rest room grab bars, signage, etc.);
- Restructuring of job or training tasks (e.g., reallocating non-essential typing, telephone or other clerical assignments among employees, assignment of non-essential tasks to others, eliminating non-essential tasks, etc.);
- Modifying schedules (e.g., permitting alternative starting and ending times to avoid standing and jostling on subways);
- Providing or modifying equipment, devices or materials (e.g., raising a desk on boards for a person who uses a wheelchair, providing flashing lights and volume controls on intercoms and telephones, installing text telephones [TTYs], providing large-print computer display programs, or materials in alternative formats, including Braille, audio tape or enlarged print, etc.);
- Providing qualified readers, interpreters, or other support services for all aspects of programs and activities including the application, interview, and testing processes, and during training and employment-related activities.

Reasonable accommodation may also include permitting the individual with a disability to use aids or services that the local entity is not otherwise required to provide. For example, although a local entity generally would not be required to provide a motorized scooter to an individual with mobility impairment, reasonable accommodation may include providing an area to stow such a mobility aid, if necessary.

The local entity is not required to provide personal items to individuals with disabilities. Such items include hearing aids, prosthetic limbs, wheelchairs, or eyeglasses. However, such items may constitute reasonable accommodation where they are specifically designed to meet needs that are related to the program or activity in which the person is participating, or the job the person is performing. For example, eyeglasses designed to enable the individual to view a computer monitor, but which are not otherwise needed outside of the program or activity in which the person is participating, or the job the person is performing, may constitute a reasonable accommodation.

Where more than one possible reasonable accommodation exists, the local entity should give primary consideration to the individual's preference in determining what accommodation it will provide.

As noted above, some requests for reasonable accommodation can be granted and implemented immediately following their receipt, without formal evaluation, consistent with this procedure. Such may be the case where the individual identifies any requested accommodation with specificity. For example, an employee who is deaf and routinely uses a text telephone (TTY) can readily identify a job-related limitation, as well as the accommodation needed. Where it is obvious that providing the TTY will enable the individual to meet the job's essential functions, the TTY can be ordered, provided and documented without the more comprehensive analysis provided for in Steps 2 and 3 (described later in the *Step by Step Process* section of this guide.) In these cases, the reasonable accommodation process is merely compressed; it is not eliminated.

Accommodations may be considered "unreasonable" only if they impose an undue hardship for the specific local entity in question. For example, shifting tasks among clerical employees to accommodate an employee with a disability may be reasonable where a sufficient number of employees exist among whom the tasks can be distributed; however, such an accommodation may be unreasonable in a very small office with few employees. The factors listed in the definition of "undue hardship" in 29 CFR 37.4 must be considered in making this determination.

Where the local entity determines that the accommodation requested by the individual would impose an undue hardship, or the modification requested would result in a fundamental alteration, the local entity *must* propose an alternative accommodation or modification that would ensure that, to the maximum extent possible, the person with a disability receives the aid, benefits, services, training, or employment offered by the local entity.

REASONABLE ACCOMMODATION POLICY AND PROCEDURE

Step by Step Process

Step 1: Individual with a Disability Requests Reasonable Accommodation:

Initial Consultation:

The individual with a disability should submit a reasonable accommodation request to designated staff. If a request for reasonable accommodation is made to facilitate the application process, the local entity manager supervising the application process should assist where requested and, in conjunction with the local entity staff, process the request for accommodation. The local entity manager receiving the request shall acknowledge each request in writing. The current request for reasonable accommodation shall not preclude the submission of subsequent requests.

Generally, it is the responsibility of the individual with a disability to inform the local entity of the need for an accommodation. Reasonable accommodation must be provided for disabilities that are known. Nevertheless, once the local entity is aware of an individual's disability, it may have the responsibility to initiate discussions about reasonable accommodation and set these procedures in motion.

Where the need for a requested accommodation is not apparent, the local entity manager supervising the application process may ask the individual to provide documentation in support of the request. For example, if the individual with dyslexia requests additional time within which to complete a timed, written entrance qualifying examination, that individual may be asked to provide documentation in support of that request.

Similarly, if an individual with a mental disability requests a flexible schedule to attend psychotherapy during the work day, the individual may be asked to provide documentation from the treating professional in support of that request.

After acknowledging a request for accommodation, the local entity manager should either:

- 1) Provide or implement the request and document the accommodation or
- 2) Proceed to Step 2 of this procedure.

Step 2: Consult with the Individual Requesting a Reasonable Accommodation

The reasonable accommodation process sometimes can be accomplished without a formal analysis of the individual's limitations and the local entity's resources, as in the example provided above, where an individual's desk is elevated on blocks to permit access from a wheelchair. Other situations are more complex, however, and require

structured analysis. In these instances, upon receipt of a request for reasonable accommodation, the local entity should consult with the individual requesting the accommodation to assess the limitations of the disability and how the individual may best be involved in the accommodation process.

Using a collaborative, open and flexible approach, the local entity should consider how any limitations can be overcome, discuss possible reasonable accommodations, and assess the effectiveness of each. Other possible resources to consult with throughout this process include, but are not limited to, the following:

- the Job Accommodation Network (JAN), which can be reached at 1-800-JAN-7234 or by accessing their website at: www.Jan.wvu.edu, or
- the California Governor's Committee on the Employment of People with Disabilities, which can be reached at: (916) 654-8055 (voice) or (916) 654-9820 (TTY).

The local entity must consider the individual's preferences, along with what is reasonable and does not impose an undue hardship.

The circumstances, in which documentation can be requested, as well as the procedure for requesting such documentation, are as follows:

- A. When the disability and/or the need for accommodation are not obvious, the local entity may ask the individual for reasonable documentation about his/her disability and functional limitations.

Reasonable documentation means that the local entity may require only the documentation that is needed to establish that a person has an actual, current disability, and that the disability necessitates a reasonable accommodation. However, the local entity, in response to a request for reasonable accommodation, cannot ask for documentation that is unrelated to determining the existence of a disability and the necessity for an accommodation.

The local entity may require that the documentation about the disability and the functional limitations come from an appropriate health care or rehabilitation professional. The appropriate professional in any particular situation will depend on the disability and the type of function limitation it imposes. Appropriate professionals include, but are not limited to, doctors (including psychiatrists), psychologist, nurses, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, and licensed mental health professionals.

In requesting documentation the local entity should specify what types of information they are seeking regarding the disability, its functional

limitations, and the need for reasonable accommodation. For example, the person can be asked to sign a limited release allowing the local entity to submit a list of specific questions to the health care or vocational professional. ***The local entity must maintain the confidentiality of all medical information collected during this process, regardless of where the information comes from.***

- 1) It is unlawful except as provided in paragraph (b) or (c), for any employer or employment agency to require any medical or psychological examination of an applicant, to make any medical or psychological inquiry of an applicant, to make any inquiry whether an applicant has a mental disability or physical disability or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.
- 2) Notwithstanding paragraph (1), an employer or employment agency may inquire into the ability of an applicant to perform job-related functions and may respond to an applicant's request for reasonable accommodation.
- 3) Notwithstanding paragraph (1), an employer or employment agency may require a medical or psychological examination or make a medical or psychological inquiry of a job applicant after an employment offer has been made but prior to the commencement of employment duties, provided that the examination or inquiry is job-related and consistent with business necessity and that all entering employees in the same job classification are subject to the same examination or inquiry.
- 4) It is unlawful except as provided in paragraph (5), for any employer or employment agency to require any medical or psychological examination of an employee, to make any medical or psychological inquiry of an employee, to make an inquiry whether an employee has a mental disability, physical disability, or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.
- 5) Notwithstanding paragraph (4), an employer or employment agency may require any examinations or inquiries that it can show to be job-related and consistent with business necessity. An employer or employment agency may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that worksite.

- B. If a person provides insufficient documentation of a disability in response to the local entity's initial request, the local entity may require the person to go to a health care professional of the local entity's choice. However, the local entity should explain why the documentation is insufficient and allow the person an opportunity to provide the missing information in a timely manner.

Please note that under the Federal disability nondiscrimination law, the local entity cannot ask for documentation under the following circumstances:

- 1) Both the disability and the need for reasonable accommodation are obvious, or
- 2) The person has already provided sufficient information to substantiate they have an actual, current disability and needs the reasonable accommodation requested.

If the individual's disability or need for reasonable accommodation is not obvious, and they refuse to provide the reasonable documentation requested by the local entity, then they are not entitled to reasonable accommodation. On the other hand, failure by the local entity to initiate or participate in an interactive process with the individual after receiving a request for reasonable accommodation could result in liability for failure to provide a reasonable accommodation.

Step 3: Local Entity Management and/or Designated Staff Analyzes the Request for Reasonable Accommodation

After consulting with the individual with a disability, the entity should examine the request and determine if the requested accommodation is feasible and does not create an undue hardship or result in a fundamental alteration. **Please note:** Where a request is denied on the basis of undue hardship or fundamental alteration, an alternative accommodation/modification must be proposed that will ensure that, to the maximum extent possible, the person with a disability receives the aid, benefits, services, training, or employment offered by the local entity.

It is unlawful for an employer or other entity covered by the WIA, Section 18829 CFR part 37, W-P Act, the Americans with Disabilities Act (ADA), and the Fair Employment and Housing Act (FEHA), to fail to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition.

The factors to be considered in determining whether an accommodation would impose an undue hardship or in determining whether the cost of a modification would result in a fundamental alteration include:

- A. The nature and net cost of the accommodation/modifications needed, taking into consideration the availability of tax credits and deductions, and/or outside funding, for the accommodation/modification;
- B. The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation/modification, including:
 - 1) The number of persons aided, benefited, served, or trained by, or employed at, the facility or facilities, and

- 2) The effect the accommodation/modification would have on the expenses and resources of the facility or facilities;
- C. The overall financial resources of the local entity, including:
- 1) The overall size of the local entity,
 - 2) The number of persons aided, benefited, served, trained, or employed by the local entity, and
 - 3) The number, type and location of the local entity's facilities;
- D. The type of operation or operations of the local entity, including:
- 1) The geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the local entity, and
 - 2) Where the individual is seeking an employment related accommodation/modification, the composition, structure and functions of the local entity's workforce; and
- E. The impact of the accommodation/modification upon the operation of the facility or facilities including:
- 1) The impact on the ability of other participants to receive aid, benefits, services, or training, or of other employees to perform their duties, and
 - 2) The impact on the facility's ability to carry out its mission.

It is unlawful for an employer or other entity covered by the WIA, Section 188, 29 CFR part 37, W-P, ADA, and the FEHA, to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee. Nothing in this document shall be construed to require an accommodation that is demonstrated by the employer or other covered entity to produce undue hardship to its operation.

Step 4: Select and Implement an Appropriate Reasonable Accommodation

Within 10 business days of receipt of a request for reasonable accommodation, the local entity to where it was submitted shall either grant or deny the request in writing. Provisions of this accommodation should commence immediately. Where the request is denied on the basis of undue hardship or fundamental alteration, the local entity must propose an alternative accommodation or modification that would ensure that, to the maximum extent possible, the person with a disability receives the aid, benefits, services, training, or employment offered by the local entity.

Where the provision or implementation of a reasonable accommodation will take longer than 10 business days, the steps taken to order, secure or carry out the accommodation shall be documented and discussed with the individual requesting a reasonable accommodation. In all instances, however, the local entity shall act as expeditiously as possible to provide reasonable accommodations.

Where further supporting documentation has been sought from the individual requesting a reasonable accommodation, the grant or denial of a request for reasonable accommodation shall be rendered as noted below:

- A. For those cases in which medical documentation is necessary in order to understand the individual's limitations and what accommodations are possible, the grant or denial shall be issued within 10 business days of receipt of the requested documentation;
- B. For those cases in which the documentation is being requested merely to verify the information provided by the individual with a disability, the grant or denial shall be issued within 5 business days of receipt of the requested documentation;
- C. For those cases in which the individual refuses to provide reasonable requested documentation, the grant or denial shall be issued within 5 business days of the notification of refusal.

Where the local entity determines to deny a request for accommodation, or to provide an accommodation other than the individual's expressed preference, the local entity shall first consult with the individual requesting the reasonable accommodation. The local entity will document the determination in writing. Where the determination is to deny the request on the basis of undue hardship or fundamental alteration, the proposed alternative accommodation or modification will also be documented.

What if an Appropriate Reasonable Accommodation cannot be identified?

Sometimes, the local entity, or the individual requesting the reasonable accommodation, cannot identify possible reasonable accommodations. In those instances, the local entity should consult with appropriate resources e.g., those listed in Step 2 of these instructions. The local entity will seek to facilitate effective communication between the parties with the goal of identifying and implementing appropriate reasonable accommodation and, where a reasonable accommodation has been selected, shall monitor its implementation.

Throughout the Step 2 consultation process, the individual, and the local entity may seek technical assistance or clarification of each component of the reasonable accommodation process from appropriate resources.